

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

ANDREW J. SMITH

v.

STATE OF RHODE ISLAND

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No. 18-00621-WES-LDA

REPLY TO OBJECTION TO STATE’S MOTION TO DISMISS

Petitioner Andrew J. Smith has filed a lengthy objection to the State’s Motion To Dismiss that, as the title suggests, is devoted to explaining why he believes that the Rhode Island child pornography statute, R.I. Gen. Laws § 11-9-1.3, is unconstitutional, violative of the First Amendment, and a prohibited act of censorship. *See* Docket Entry No. 14. Smith does not respond, let alone rebut, the State’s position that this Court should dismiss this habeas petition because Smith has not exhausted his state court remedies, a prerequisite for federal habeas relief under 28 U.S.C. § 2254(b)(1)(A). To the contrary, Smith attaches a copy of the “Pre-Brief” that he filed in connection with the appeal of his child pornography conviction that is currently pending in the Rhode Island Supreme Court. *See* Docket Entry No. 14-1. Since Smith has not—and cannot—rebut the State’s position that he has not exhausted his state court remedies with respect to his 2018 state child pornography conviction, this Court should dismiss his Petition Under 28 U.S.C. § 2254 For Writ Of Habeas Corpus By A Person In State Custody (Docket Entry No. 1).

Respectfully submitted,
STATE OF RHODE ISLAND
By its Attorneys,

PETER F. NERONHA
ATTORNEY GENERAL

/s/ Christopher R. Bush

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Date: March 13, 2019

CERTIFICATION

I certify that on March 13, 2019, I filed this document electronically and that it is available for viewing and downloading from the ECF system and that I caused a copy of this document to be sent to the following by first class mail:

Andrew J. Smith
P.O. Box 8274
Cranston, R.I. 02920

/s/ Christopher R. Bush
